

Rejected by House 4-12-2013

SB74 H JUD AM 4-10 #1

The Committee on the Judiciary moves to amend the bill on page one, following the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof the following language:

1 That §52-1-2, §52-1-5a and §52-1-8 of the Code of West
2 Virginia, 1931, as amended, be amended and reenacted, all to read
3 as follows:

4 **ARTICLE 1. PETIT JURIES.**

5 **§52-1-2. Prohibition of discrimination.**

6 A citizen may not be excluded from jury service on account of
7 race, color, religion, sex, sexual orientation, national origin,
8 economic status or being a qualified individual with a disability.

9 **§52-1-5a. Jury qualification form; contents; procedure for use;**
10 **penalties.**

11 (a) Not less than twenty days before the date for which
12 persons are to report for jury duty, the clerk may, if directed by
13 the court, serve by first-class mail, upon each person listed on
14 the master list, a juror qualification form accompanied by
15 instructions necessary for its completion: *Provided*, That the
16 clerk may, if directed by the court, mail the juror qualification
17 form to only those prospective jurors drawn for jury service under
18 the provisions of section seven of this article. Each prospective

1 juror shall be directed to complete the form and return it by mail
2 to the clerk within ten days after its receipt. The juror
3 qualification form is subject to approval by the circuit court as
4 to matters of form and shall elicit the following information
5 concerning the prospective juror:

6 (1) The juror's name, sex, race, age and marital status;

7 (2) The juror's level of educational attainment, occupation
8 and place of employment;

9 (3) If married, the name of the juror's spouse and the
10 occupation and place of employment of the spouse;

11 (4) The juror's residence address and the juror's mailing
12 address if different from the residence address;

13 (5) The number of children which the juror has and their ages;

14 (6) Whether the juror is a citizen of the United States and a
15 resident of the county;

16 (7) Whether the juror is able to read, speak and understand
17 the English language;

18 (8) Whether the juror has any physical or mental disability
19 substantially impairing the capacity to render satisfactory jury
20 service: *Provided*, That a juror with a physical disability, who
21 can with reasonable accommodation render competent service, is
22 eligible for service;

23 (9) Whether the juror has, within the preceding two years,
24 been summoned to serve as a petit juror, grand juror or magistrate

1 court juror, and has actually attended sessions of the magistrate
2 or circuit court and been reimbursed for his or her expenses as a
3 juror;

4 (10) Whether the juror has lost the right to vote because of
5 a criminal conviction; and

6 (11) Whether the juror has been convicted of perjury, false
7 swearing or ~~other infamous offense~~ any crime punishable by
8 imprisonment in excess of one year under the applicable law of this
9 state, another state or the United States.

10 The juror qualification form may also request information
11 concerning the prospective juror's religious preferences and
12 organizational affiliations, except that the form and the
13 accompanying instructions shall clearly inform the juror that this
14 information need not be provided if the juror declines to answer
15 such inquiries.

16 (b) The juror qualification form shall contain the prospective
17 juror's declaration that the responses are true to the best of the
18 prospective juror's knowledge and an acknowledgment that a willful
19 misrepresentation of a material fact may be punished by a fine of
20 not more than \$500 or imprisonment for not more than thirty days,
21 or both fine and imprisonment. Notarization of the juror
22 qualification form shall not be required. If the prospective juror
23 is unable to fill out the form, another person may assist the
24 prospective juror in the preparation of the form and indicate that

1 such person has done so and the reason therefor. If an omission,
2 ambiguity or error appear in a returned form, the clerk shall again
3 send the form with instructions to the prospective juror to make
4 the necessary addition, clarification or correction and to return
5 the form to the clerk within ten days after its second receipt.

6 (c) Any prospective juror who fails to return a completed
7 juror qualification form as instructed shall be directed by the
8 clerk to appear forthwith before the clerk to fill out the juror
9 qualification form. At the time of the prospective juror's
10 appearance for jury service, or at the time of any interview before
11 the court or clerk, any prospective juror may be required to fill
12 out another juror qualification form in the presence of the court
13 or clerk. At that time the prospective juror may be questioned
14 with regard to the responses to questions contained on the form and
15 the grounds for the prospective juror's excuse or disqualification.
16 Any information thus acquired by the court or clerk shall be noted
17 on the juror qualification form.

18 (d) Any person who willfully misrepresents a material fact on
19 a juror qualification form or during any interview described in
20 subsection (c) of this section, for the purpose of avoiding or
21 securing service as a juror, is guilty of a misdemeanor and, upon
22 conviction thereof, shall be fined not more than \$500 or imprisoned
23 not more than thirty days, or both fined and imprisoned.

1 (e) Upon the clerks's receipt of the juror qualification
2 questionnaires of persons selected as prospective petit jurors, he
3 or she shall make the questionnaires of the persons so selected
4 available, upon request, to counsel of record in the trial or
5 trials for which the persons have been selected as prospective
6 jurors.

7 **52-1-8. Disqualification from jury service.**

8 ~~(a) The court upon request of a prospective juror or on its~~
9 ~~own initiative, shall determine on the basis of information~~
10 ~~provided on the juror qualification form or interview with the~~
11 ~~prospective juror or other competent evidence whether the any~~
12 prospective juror is disqualified for jury service on the basis of
13 information provided on the juror qualification form or interview
14 with the prospective juror or other competent evidence. The clerk
15 shall enter this determination in the space provided on the juror
16 qualification form and on the alphabetical lists of names drawn
17 from the jury wheel or jury box.

18 (b) A prospective juror is disqualified to serve on a jury if
19 the prospective juror:

20 (1) Is not a citizen of the United States, at least eighteen
21 years old and a resident of the county;

22 (2) Is unable to read, speak and understand the English
23 language. For the purposes of this section, the requirement of
24 speaking and understanding the English language is met by the

1 ability to communicate in American Sign Language or Signed English;

2 (3) Is incapable, by reason of substantial physical or mental
3 disability, of rendering satisfactory jury service. ~~but~~ A person
4 claiming this disqualification may be required to submit a
5 physician's certificate as to the disability and the certifying
6 physician is subject to inquiry by the court at its discretion;

7 (4) Has, within the preceding two years, been summoned to
8 serve as a petit juror, grand juror or magistrate court juror and
9 has ~~actually~~ attended sessions of the magistrate or circuit court
10 and been reimbursed for his or her expenses as a juror pursuant to
11 the provisions of section twenty-one of this article, section
12 thirteen, article two of this chapter, or pursuant to an applicable
13 rule or regulation of the Supreme Court of Appeals promulgated
14 pursuant to the provisions of section eight, article five, chapter
15 fifty of this code;

16 (5) Has lost the right to vote because of a criminal
17 conviction; or

18 (6) Has been convicted of perjury, false swearing or ~~other~~
19 ~~infamous offense~~ any crime punishable by imprisonment in excess of
20 one year under the applicable law of this state, another state or
21 the United States.

22 (c) A prospective juror seventy years of age or older is not
23 disqualified from serving but shall be excused from service by the
24 court upon ~~the juror's~~ his or her request.

1 (d) A prospective grand juror is disqualified to serve on a
2 grand jury if ~~the prospective grand juror~~ he or she is an
3 officeholder under the laws of the United States or of this state
4 except that the term "officeholder" does not include notaries
5 public.

6 (e) A person who is physically disabled and can render
7 competent service with reasonable accommodation ~~shall not be~~ is not
8 ineligible to act as juror ~~or~~ and may not be dismissed from a jury
9 panel on the basis of disability alone. ~~Provided, That~~ The circuit
10 judge shall, upon motion by either party or upon his or her own
11 motion, disqualify a disabled juror if the circuit judge finds that
12 the nature of potential evidence in the case including, but not
13 limited to, the type or volume of exhibits or the disabled juror's
14 ability to evaluate a witness or witnesses, unduly inhibits the
15 disabled juror's ability to evaluate the potential evidence. For
16 purposes of this section:

17 (1) Reasonable accommodation includes, but is not limited to,
18 certified interpreters for the hearing impaired, spokespersons for
19 the speech impaired, real-time court reporting and readers for the
20 visually impaired.

21 (2) The court shall administer an oath or affirmation to any
22 person present to facilitate communication for a disabled juror.
23 The substance of ~~such~~ the oath or affirmation shall be that any
24 person present as an accommodation to a disabled juror will not

1 deliberate on his or her own behalf, although present throughout
2 the proceedings, but act only to accurately communicate for and to
3 the disabled juror.

4 (f) Nothing in this article ~~shall be construed so as to limit~~
5 ~~in any way~~ limits a party's right to preemptory strikes in civil or
6 criminal actions.